

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ALLISON HETRICK, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ASCEND LEARNING, LLC,

Defendant.

Civil Action No. 1:25-CV-10103-NMG

**DECLARATION OF MARK
DAVID McPHERSON IN
SUPPORT OF DEFENDANT'S
MOTION TO DISMISS**

ORAL ARGUMENT REQUESTED

I, Mark David McPherson, declare:

1. I am a partner at Goodwin Procter LLP, counsel of record for Defendant Ascend Learning, LLC in this case. I am appearing in this Court *pro hac vice*. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would competently testify to the matters set forth herein.

2. I submit this declaration in support of Defendant's Motion to Dismiss the First Amended Complaint.

3. Attached as **Exhibit A** is a true and correct copy of the "Why ATI" webpage on Assessment Technologies Institute, LLC's website, which is publicly available on ATI's website at <https://www.atitesting.com/about>. I downloaded the attached copy from ATI's website on April 4, 2025.¹

4. Attached as **Exhibit B** is a true and correct copy of the "Test your A & P

¹ As webpages do not print to hard copy the exact same way that they appear on screen, the hard copies attached to this declaration reflect the form in which each webpage printed. Should the Court visit the webpages at the links provided, the Court will find that the hard copies do not omit any material information with respect to the appearance of, and content included on, each webpage.

knowledge” webpage on ATI’s website, which is publicly available on ATI’s website at <https://www.atitesting.com/anatomy-and-physiology>. I downloaded the attached copy from ATI’s website on April 4, 2025.

5. Attached as **Exhibit C** is a true and correct copy of the “Elevate your nursing journey with ATI” webpage on ATI’s website, which is publicly available on ATI’s website at <https://www.atitesting.com/solutions>. I downloaded the attached copy from ATI’s website on April 4, 2025.

6. Attached as **Exhibit D** is a true and correct copy of the “Pharmacology Made Easy” webpage on ATI’s website, which is publicly available on ATI’s website at <https://www.atitesting.com/pharmacology/pharmacology-made-easy>. I downloaded the attached copy from ATI’s website on April 4, 2025.

7. Attached as **Exhibit E** is a true and correct copy of the “Learning Strategies: Your Guide To Classroom and Test-Taking Success” webpage on ATI’s website, which is publicly available on ATI’s website at <https://www.atitesting.com/pre-nursing-school/learning-strategies>. I downloaded the attached copy from ATI’s website on April 4, 2025.

8. Attached as **Exhibit F** is a true and correct copy of the “Review Module Package” webpage on ATI’s website, which is publicly available on ATI’s website at <https://www.atitesting.com/review-module-package>. I downloaded the attached copy from ATI’s website on April 4, 2025.

9. Attached as **Exhibit G** is a true and correct copy of the “Your Privacy Choices” pop-up on the homepage of ATI’s website which is publicly available on ATI’s website at <https://www.atitesting.com>, by clicking on “Your Privacy Choices” at the bottom of the page. I downloaded the attached copy from ATI’s website on April 4, 2025.

10. Attached as **Exhibit H** is a true and correct copy of the Ascend Global Privacy Policy, which is publicly available on ATI's website at https://auth.atitesting.com/policy.html?_gl=1*1af0b8d*_gcl_au*OTYxNDI3MjY3LjE3NDE4NzYwNTI. I downloaded the attached copy from ATI's website on April 4, 2025.

11. Attached as **Exhibit I** is a true and correct copy of the "Dosage Calculation & Safe Medication Administration" webpage on ATI's website which is publicly available on ATI's website at <https://www.atitesting.com/pharmacology/dosage-calculation-safe-medication-administration>. I downloaded the attached copy from ATI's website on April 4, 2025.

12. Attached as **Exhibit J** is a true and correct copy of the "TEAS Prep Product Comparison" webpage on ATI's website which is publicly available on ATI's website at <https://www.atitesting.com/teas/compare-prep> (last visited May 8, 2025). I downloaded the attached copy from ATI's website on May 8, 2025.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 12, 2025 in New York, New York.

/s/ Mark David McPherson

Mark David McPherson (*pro hac vice*)

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CERTIFICATE OF SERVICE

I, Mark David McPherson, hereby certify that a copy of the foregoing document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on May 12, 2025.

/s/ Mark David McPherson

Mark David McPherson